

FILED
U.S. DISTRICT COURT
NORTHERN DIST. OF TX
FT. WORTH DIVISION

PAUL N. WARE and FINANCIAL
SYSTEMS INNOVATION LLC,

Plaintiffs.

V.

PIER 1 IMPORTS, INC., H.E. BUTT GROCERY COMPANY, WILLIAMS-SONOMA, INC., LINENS 'N THINGS, INC., ALBERTSON'S, INC., COSTCO WHOLESALE CORPORATION, PETSMART, INC., PETCO ANIMAL SUPPLIES, INC. and THE BOMBAY CO., INC..

Defendants.

ORIGINAL COMPLAINT

Plaintiffs PAUL N. WARE (“WARE”) and FINANCIAL SYSTEMS INNOVATION LLC (“FINANCIAL SYSTEMS”) file this Original Complaint against Defendants PIER 1 IMPORTS, INC. (“Pier 1”), H.E. BUTT GROCERY COMPANY (“HEB”), WILLIAMS-SONOMA, INC. (“Williams-Sonoma”), LINENS ‘N THINGS, INC. (“LNT”), ALBERTSON’S, INC. (“Albertson’s), COSTCO WHOLESALE CORPORATION (“Costco”), PETSMART, INC. (“PetSmart”) PETCO ANIMAL SUPPLIES, INC. (“Petco”) and THE BOMBAY CO., INC. (“Bombay”) and allege as follows:

THE PARTIES

1. WARE is a citizen of the State of Georgia, residing at 1090 Barker Road, Rome, Georgia 30165.

2. FINANCIAL SYSTEMS is a limited liability company organized and existing under the laws of the State of Illinois, with its principal place of business at 500 Skokie Boulevard, Suite 585, Northbrook, Illinois 60062.

3. Upon information and belief, PIER 1 is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 301 Commerce Street, Suite 600, Fort Worth, Texas 76102. PIER 1 may be served with process through its registered agent, Prentice-Hall Corp. System, Inc. located at 701 Brazos Street, Suite 1050, Austin, Texas 78701.

4. Upon information and belief, BOMBAY is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 550 Bailey Avenue, Fort Worth, Texas 76107. BOMBAY may be served with process through its Registered Agent, The Prentice-Hall Corporation System at 701 Brazos Street, Suite 1050, Austin, Texas 78701.

5. Upon information and belief, HEB is a corporation organized and existing under the laws of the State of Texas, with a principal place of business at 646 South Main Avenue, San Antonio, Texas 78204. HEB may be served with process through its Registered Agent, Dean Deckard at 646 South Main Avenue, San Antonio, Texas 78204.

6. Upon information and belief, LNT is a corporation organized and existing under the laws of the State of Texas, with a principal place of business at 6 Brighton Road, Clifton, New Jersey 07015. LNT may be served with process through its Executive Vice President and CFO, William T. Giles, at 6 Brighton Road, Clifton, New Jersey.

7. Upon information and belief, ALBERTSON'S is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 250 Park Center Boulevard, Boise, Idaho 83726. ALBERTSON'S may be served with process through its

Registered Agent, Corporation Service Company dba CSC-Lawyers Incorporated at 701 Brazos Street, Suite 1050, Austin, Texas 78701.

8. Upon information and belief, COSTCO is a corporation organized and existing under the laws of the State of Washington, with a principal place of business at 999 Lake Drive, Issaquah, Washington 98027. COSTCO may be served with process through its Registered Agent, CT Corporation System, 350 N. St. Paul Street, Dallas, Texas 75201.

9. Upon information and belief, PETSMART is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 19601 North 27th Avenue, Phoenix, Arizona 85027. PETSMART may be served with process through its Registered Agent, CT Corporation System at 350 North St. Paul Street, Dallas, Texas 75201.

10. Upon information and belief, PETCO is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 9125 Rehco Road, San Diego, CA 92121. PETCO may be served with process through its Registered Agent, The Prentice-Hall Corporation System at 701 Brazos Street, Suite 1050, Austin, Texas 78701.

JURISDICTION AND VENUE

11. This is an action for infringement of a United States patent. This Court has exclusive jurisdiction of this cause of action under 28 U.S.C. § 1338(a).

12. All of the Defendants have transacted and at the time of the filing of this Complaint are transacting business within the Fort Worth Division of the Northern District of Texas. Venue is proper in this Court under 28 U.S.C. § 1391(b) and (c) and under 28 U.S.C. § 1400(b).

CAUSE OF ACTION FOR PATENT INFRINGEMENT

13. WARE is the owner of United States Patent No. 4,707,592 ("the '592 patent"), entitled "Personal Universal Identity Card System for Failsafe Interactive Financial Transactions," which was duly and legally issued on November 17, 1987 to WARE. A true and correct copy of this patent is attached hereto as Exhibit A.

14. FINANCIAL SYSTEMS is the exclusive licensee of the '592 Patent.

15. Plaintiffs have written to all of the Defendants except Petsmart and Bombay, notifying them of the '592 Patent as well as notifying them of the fact that we had initiated litigation against other companies for infringement of the '592 Patent. Despite that notification, the Defendants that have been contacted failed to respond or otherwise provide any meaningful response. Since that time, Plaintiffs have successfully concluded litigation resulting in the granting of licenses and the acknowledgment that the '592 Patent is valid by Walgreen's, Office Depot and most recently, Target. Plaintiffs have also entered into a license agreement resulting in the entry of a consent judgment by the Gap.

16. Prior litigation involving the '592 Patent has been initiated in the United States District Court for the Northern District of Georgia, Rome Division. However, on information and belief, many of the named Defendants herein do not have retail stores in that District and Division. Defendants do manufacture, make, have made, use, sell and/or offer to sell products and/or systems that infringe claims in the '592 patent; and/or induce or contribute to the infringement of the claims in '592 patent by others.

17. All of the Defendants have regular places of business within the Fort Worth Division of the Northern District of Texas and have committed infringing acts, including the use of infringing products and/or systems, within the Fort Worth Division and the Northern District of Texas.

18. Plaintiffs assert that infringement by Defendants PIER 1, HEB, WILLIAMS-SONOMA, LNT, ALBERTSON'S, COSTCO and PETCO is willful. At this time, Plaintiffs are not charging Defendants Petsmart or Bombay with willful infringement.

19. Defendants will continue to so infringe the '592 patent unless enjoined by this Court.

20. As a result of Defendants' infringing conduct, FINANCIAL SYSTEMS and WARE have been irreparably damaged to an extent not yet determined, and will continue to be irreparably damaged by such acts in the future unless Defendants are enjoined by this Court from committing further acts of infringement.

JURY DEMAND

21. Plaintiffs hereby request a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

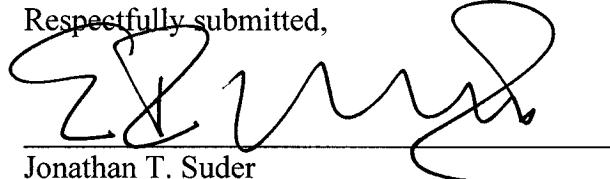
PRAYER

WHEREFORE, Plaintiffs respectfully request that the Court find in favor of WARE and FINANCIAL SYSTEMS, and against the Defendants and grant WARE and FINANCIAL SYSTEMS the following relief:

- a. that one or more claims of United States Patent No. 4,707,592 have been infringed, either literally and/or under the doctrine of equivalents, by Defendants and/or by others to which Defendants have contributed to and/or induced infringement;
- b. that Defendants account for and pay to Plaintiffs all damages and costs of Plaintiffs caused by said Defendants' activities complained of herein;

- c. that Plaintiffs be granted pre-judgment and post-judgment interest on the damages caused to it by reason of Defendants' activities complained of herein;
- d. that this Court declare this an exceptional case and award Plaintiffs their reasonable attorney's fees and costs in accordance with 28 U.S.C. § 285;
- e. that the infringement of Defendants PIER 1, HEB, WILLIAMS-SONOMA, LNT, ALBERTSON'S, COSTCO and PETCO be declared willful such that Plaintiffs be awarded additional damages up to three times the amount found or assessed as authorized by 28 U.S.C. § 284.
- f. that a preliminary and permanent injunction be issued enjoining Defendants from any further activity that infringes on one or more claims of United States Patent No. 4,707,592; and
- g. that the Plaintiffs be granted such other and further relief as the Court may deem just and proper under the circumstances.

Respectfully submitted,



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